

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 7816

BILL NUMBER: HB 1459

NOTE PREPARED: Jan 10, 2007

BILL AMENDED:

SUBJECT: Bias Crimes.

FIRST AUTHOR: Rep. Porter

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

Civil Action: The bill allows a person who suffers a personal injury or property damage caused by a criminal offense to bring a civil action to recover damages, including punitive damages, if the person who committed the offense knowingly or intentionally selected the victim because of the victim's color, creed, disability, national origin, race, religion, sexual orientation, gender identity, or sex.

Aggravating Circumstance: The bill makes commission of a crime because of the color, creed, disability, national origin, race, religion, sexual orientation, gender identity, or sex of the victim an aggravating circumstance that may be considered by a judge when the judge imposes a sentence for the crime.

Sexual Orientation: The bill expands the scope of the offenses relating to civil rights to include violations directed at a person because of the person's sexual orientation.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *Aggravating Circumstance:* State expenditures would increase if an offender is incarcerated for a longer period of time, incarcerated for life, or sentenced to death. There are no data to indicate if offenders would receive a longer sentence if the court may consider that the offender knowingly and intentionally selected the crime victim or property of the crime victim because of the color, creed, disability, national origin, race, religion, sexual orientation, gender identity, or sex of the victim. There are also no data to indicate how many more offenders may be subject to the life imprisonment or the death penalty, if the selection of the murder victim was based on the color, creed, disability, national origin, race,

religion, sexual orientation, gender identity, or sex of the victim. Ultimately, any increase in expenditures would depend on the actions of the offender and the sentencing decisions of the court.

Background - Aggravating Circumstance: Depending upon mitigating and aggravating circumstances, a Class A felony is punishable by a prison term ranging from 20 to 50 years; a Class B felony is punishable by a prison term ranging from 6 to 20 years; Class C felony is punishable by a prison term ranging from 2 to 8 years, and a Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor. The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,139.

In the following analysis, LSA staff compared the costs that the state assumes for state assistance to the counties in the trial stage, and the staff costs during direct appeal, post conviction relief, and federal habeas corpus review. The average age of 84 offenders who were sentenced to death was 30 at the time when a request for a death penalty was made against them.

LSA assumed that convicted offenders would:

- spend an average period of 16 years on death row before being executed if the death penalty was imposed;
- serve 32 years of a sentence if sentenced to 65 years in prison since most offenders reduce their sentences by one day for each day that they comply with prison facility codes of behavior;
- remain in DOC facilities until the age of 77 if sentenced to life without parole.

Because these costs occur at different points in time, a net present value was prepared for each cost stream assuming an annual inflation rate of 5%. The following table presents the net present value of these costs.

Post Trial Costs to the State of Sentencing Options for a 30-Year-Old Offender Sentenced for Aggravated Murder			
		Net Present Value for:	
Sentence	Number of Years of Incarceration	State Expenditures	State and County Expenditures
Death Penalty	16*	\$575,861	\$741,246
Life Without Parole	47	\$582,685	\$622,957
65 Years with 50% Credit Time	32.5	\$466,460	\$506,732
* Based on nine offenders who appealed execution.			

Explanation of State Revenues: *Civil Action:* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee

(\$15), the public defense administration fee (\$3), the court administration fee (\$2), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Sexual Orientation: There are no data available to indicate if more offenders will be convicted of committing a civil rights violation, a Class B misdemeanor, or of discrimination in jury selection, a Class A misdemeanor, if sexual orientation is added to the definition of the offense.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000 and for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Aggravating Circumstance:* Local expenditures would increase if an offender is incarcerated for a longer period of time in a local jail. Ultimately, any increase in expenditures would depend on the sentence imposed by the court.

Aggravating Circumstance and Sexual Orientation: A Class A misdemeanor is punishable by up to one year in jail; a Class B misdemeanor is punishable by up to 180 days in jail; and a Class C misdemeanor is punishable by up to 60 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Civil Action and Sexual Orientation:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee or the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, city and town courts; local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

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